IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

CIVIL WRIT No. 3061 of 1995

USMAN GANI GAURI
V/S
ASSTT. COMMISSIONER OF GIFT TAX

Mr. RAMIT MEHTA, for the appellant / petitioner

Mr. KK BISSA, for the respondent

Date of Order : 18.4.2007

HON'BLE SHRI N P GUPTA,J.

ORDER

By this petition the petitioner seeks to challenge the notices Annex.1 and 3, and the proceedings pursuant thereto.

The facts of the case, as alleged in the writ petition are, that the petitioner's late father Salaludeen sold 76 plots through his power of attorney holder Sanjeev Kumar for a consideration of Rs.11,38,840/- to various purchasers on different dates vide various registered sale deeds during the previous year 1992-93 relating to the assessment year 1993-94. At the time of registration, the Sub-Registrar took the value of these plots at Rs.26,82,400/-. According to the petitioner, the apparent consideration was the real consideration, and the properties were sold for adequate consideration, representing the market value. However, Gift Tax Officer

issued notice under Section 15(4)(i) of the Gift Tax Act, hereafter to be referred to as 'the Act', stating that the assessee has made gift of Rs.15,43,550/- within the meaning of Section 4(1) of the Act, and is liable to pay gift tax, and called upon to furnish the return in the prescribed form on or before 16th March 1994. According to the petitioner, he submitted reply, requesting the Gift Tax Officer to furnish the details of the alleged gifts while disputing to have made any gift, and to comply with the order a 'nil' return was also submitted. Thereafter, the Gift Tax Officer, vide notice dated 29.3.94, informed that the aforesaid plots have been sold through power of attorney, for an apparent consideration of Rs.11,38,840/-, whereas the Sub-Registrar has taken the fair market value as Rs.26,82,400/-. Thus, there is a deemed gift of Rs.15,43,550/-, within the meaning of Section 4(1). This has been produced as Annex.3. The petitioner sent a reply to the Assistant Commissioner of Gift Tax, Investigation Circle Bikaner, to whom the case was transferred, disputing the alleged presumption of deemed gift on the basis of the Sub-Registrar's version, and also requested for being supplied the complete particulars and details of the alleged deemed gifts. However, no such details were supplied and the petitioner was sought to be proceeded against, only on the basis of the value adopted by the Sub-Registrar, for the purpose of registration. While this cannot be taken as a deemed gift under Section 4(1)(a) of

the Act. In these circumstances, the present writ petition has been filed, for the above reliefs.

A reply had been filed on behalf of the respondent, maintaining that the market value of the land was Rs.26,82,400/-, as adopted by the Sub-Registrar, and that has been taken the market value of the plots, and the action was sought to be justified. It was also pleaded, that the petitioner has an alternative remedy of appeal.

Then a rejoinder has been filed by the petitioner, contending that the Sub-Registrar did not adopt cost of the plots as Rs.26,82,400/- but only adopted as Rs.15,65,400/-. Then the petitioner was supplied the list, containing the value of these plots, as adopted by the Sub-Registrar. However, from that list, it is revealed that the total value taken by the Sub-Registrar was Rs.15,65,400/- only. Then it was also pleaded, that there is a totaling mistake in that list, and if it is correctly totaled, the amount come to Rs.14,57,500/-. Then it is reiterated, that the property has been sold for adequate consideration, at a market price. It was also pleaded that before issuing notice, it is mandatory for assessing authority, to come a conclusion, that consideration of transfer was less than the market value, determined as per II Schedule of the Act, while no such determination has been made, and thus, the basic foundation to issue notice is lacking, and thus, the

notice is wholly without jurisdiction. Then it is also pleaded, that after initiation of the proceedings, the respondent referred the matter of valuation, under Section 15(6) of the Act, to the Valuation Officer, who after inspecting the site, and also issuing notice to the petitioner, estimated the value of the land to be Rs.11,94,000/-, as per his report dated 22.3.96, copy whereof has been produced as Annex.7. Thus, it is contended that on the face of this Annex.7 also, the notices Annex.1 and 3 and any further proceeding thereon cannot be sustained.

Learned counsel for the respondent maintained that the petitioner should appear and reply to the notice, and project his version before the Assessing Authority, who shall decide the matter in accordance with law.

I have considered the submissions and find, that as the things transpire from the documents on record, that there was no basis whatever available with the authority, to issue notices Annex.1 and 3. Even in the notices, it is not recited that the Assessing Authority had come to the conclusion that the consideration for transfer was less than the fair market value, as determined as per Schedule II of the Act, as required by Section 4(1)(a), and in absence of any such recital being there, and in any case even in absence of any such material being there, available

with the authority issuing the notice, it cannot be said, that the authority had any jurisdiction to issue such notices.

Learned counsel for the respondent was repeatedly asked to point out the basis on which the authority assumed jurisdiction to issue notice, and the only reply given was, that the Sub-Registrar had taken the value of the property to be Rs.26,82,400/-. Of course it has come on record, during pendency of the writ petition only, that even according to the list supplied by the department, the valuation determined by the Sub-Registrar has been found to be Rs.14 lacks and odd, or 15 lacks and odd, and even when the department itself got the property valued, it was found by the Valuation Officer of the Income Tax Department, vide Annex.7 to be worth Rs.11 lacks and odd only. Significantly, in this report, the Valuation Officer had adopted the rates, on the basis of certificate issued by Sub-Registrar Bikaner City.

These circumstances do clearly show, and rather reassure, that there was no material available with the authority, to assume jurisdiction to issue notices Annex.1 and 3.

Consequently, the writ petition is allowed and Annex.1 and 3 so also any further proceeding thereon, are

quashed. The parties shall bear their own costs.

( N P GUPTA ),J.

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